

**IN THE UNITED STATES DISTRICT COURT  
FOR THE EASTERN DISTRICT OF VIRGINIA  
RICHMOND DIVISION**

FLSMIDTH INC.  
2040 Avenue C  
Bethlehem, PA 18017

Plaintiff,

v.

DOMINION ENERGY SERVICES, INC.  
120 Tredegar Street  
Richmond, VA 23219

SERVE:

CT Corporation System  
4701 Cox Road, Suite 285  
Glen Allen, VA 23060

Defendant.

Case No. **3:18-cv-00673-JAG**

**COMPLAINT**

FLSmidth Inc. ("FLS"), by counsel, for its Complaint against Dominion Energy Services, Inc. ("Dominion") states the following:

**NATURE OF THE ACTION**

1. This is an action for breach of contract arising out of Dominions' failure to make payments owed to FLS in accordance with a contract between Dominion and FLS. Specifically, FLS provided engineering services, labor, materials, and equipment to Dominion under Purchase Order No. 70285017 dated December 3, 2014 (the "PO"), and Dominion has failed to pay the balance due and owed of \$164,750.79.

### **PARTIES**

2. FLS is a corporation formed in Delaware, with its principal place of business in Bethlehem, Pennsylvania.

3. Dominion is a corporation formed in the Commonwealth of Virginia with its principal place of business in Richmond, Virginia.

### **JURISDICTION AND VENUE**

4. Federal diversity jurisdiction exists pursuant to 28 U.S.C. § 1332. FLS is a Delaware corporation with its principal place of business in Pennsylvania. Dominion is a Virginia corporation with its principal place of business in Virginia. The amount in controversy, exclusive of interest and costs, exceeds \$75,000.

5. Venue is proper in this Court pursuant to 28 U.S.C. § 1391 because Defendant Dominion is located in this District and a substantial part of the events or omissions on which the claims asserted herein are based occurred in this District.

### **FACTUAL ALLEGATIONS**

6. Pursuant to the PO, FLS was to provide engineering services, labor, materials, and equipment at the VA City Hybrid Energy Center, Dominion, 3425 Russell Creek Road, St. Paul, VA 24283, for a sum of \$3,266,414.34, plus Virginia sales taxes totaling \$144,597.15.

7. From December of 2014 through July 2015, FLS provided the engineering services, labor, materials, and equipment required under the PO, including additional materials and services, pursuant to an addendum to the PO for the additional amount of \$18,334.53, plus Virginia taxes totaling \$333.32.

8. The adjusted sum of the PO is \$3,284,748.87, plus Virginia sales taxes totaling \$144,930.47, for a total PO sum of \$3,429,679.34.

9. To date, Dominion has paid FLS \$3,264,928.55 leaving an unpaid balance due and owed of \$164,750.79.

10. FLS has repeatedly demanded payment from Dominion of the outstanding balance due under the PO.

11. Dominion has admitted that FLS is due the outstanding balance of \$164,750.79. By email dated August 17, 2018, Dominion represented that it intended “to have a check cut by early to mid-next week,” for the outstanding balance due and owed. Despite this admission, Dominion has not paid FLS the outstanding balance due and owed.

12. The PO is a valid and enforceable agreement, in which Dominion agreed to pay FLS \$3,264,928.55 for the services, labor, materials, and equipment FLS provided as required by the PO.

13. FLS fully complied with the PO and addendum thereto.

14. Dominion failed to pay FLS the amount of \$164,750.79 in accordance with the terms of the PO despite FLS’ repeated demands thereby materially breaching the contract.

15. As a direct and proximate result of Dominion’s material breach of the PO, FLS has suffered damages in the amount of \$164,750.79, and is entitled to recover that amount along with prejudgment interest, attorneys’ fees, and costs.

**WHEREFORE**, FLS requests this Court to enter judgment against Dominion on its behalf in the amount of \$164,750.79, plus prejudgment interest, attorneys’ fees, costs, and further and different relief as the Court deems just and proper.

Date: October 2, 2018

Respectfully submitted,

/s/ Amy E. Garber

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